U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Miami Date: AUG 10 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT:

[redacted]

Public Copy
Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Colombia who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides, in pertinent part:

> [T]he status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence. The provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States.

The district director determined that the applicant was not eligible for adjustment of status as a spouse of a native or citizen of Cuba pursuant to section 1 of the Act of November 2, 1966, because he had not established that his marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States. The district director, therefore, denied the application.

In response to the notice of certification, counsel asserts that the decision refers only to some of the answers given on May 7, 1999, it does not reveal the number of correct answers given on that date, and it completely ignores the correct answers previously given on November 18, 1998.

The record reflects that on September 23, 1997 at Miami, Florida, the applicant married a native and citizen of Cuba whose immigration status was adjusted to that of a lawful permanent resident of the United States pursuant to section 1 of the Cuban Adjustment Act.

At an interview regarding his application for permanent residence on May 7, 1999, the applicant and his spouse were each placed under oath and questioned separately regarding their domestic life and

shared experiences. Citing Matter of Laureano, 19 I&N Dec. 2951 (BIA 1983), and Matter of Phillis, 15 I&N Dec. 385 (BIA 1975), the district director determined that based on the discrepancies encountered at the interview, a number of which relate to the inception of the marriage, and the lack of material evidence presented, the applicant has failed to establish that his marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States.

Counsel argues that the director was more concerned with the approximately eight questions rather than the correct answers to other questions. It should be noted, however, that the questions posed on the petitioner and his spouse are all crucial in establishing that there is a bona fide marital relationship. Specifically noted are conflicting answers to significant questions raised by the district director and not refuted by the applicant in his response to the notice of certification:

> You were both asked who owns the house where you are renting a room and with whom he or she lives and you stated it is [redacted] and that he lives there with his wife and two children. On the other hand, the petitioner stated that Ricardo is the owner of the house she has rented a room since September 27, 1997 and that Ricardo is not married and that he lives alone there. As to how you acquired the wedding bands, you stated that you went together to buy them; the petitioner said she did not go with you to buy them.
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> You were both asked how many windows your bedroom has and you stated it has only one and that it has fabric curtain over it. On the other hand, the petitioner said that the bedroom has two windows and that they have vertical blinds over them.

It is not unreasonable to assume that if one rents "only one bedroom w/bath of the entire property," as noted on the lease agreement, one would know the discription of the bedroom he is leasing and living in, including knowledge of others living in the house he is sharing. Likewise, it may be assumed that buying a wedding ring would be considered a very important occasion to the couple planning a marriage. Furthermore, while the applicant's spouse stated at the interview that she resided with her parents prior to her marriage to the applicant but that she sometimes stayed with [redacted] it is unclear as to how the spouse had not met [redacted] wife whom the director had indicated is also the applicant's ex-wife.

The documentation contained in the record of proceeding, including joint accounts and car insurance, and the inadequate explanations on notice of certification regarding the conflicting answers given at the time of interview, are insufficient to overcome the district director's finding that the applicant had not established that his marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States.

The applicant is neither a native nor a citizen of Cuba, nor has he submitted sufficient evidence to support his claim that he is residing with his Cuban citizen spouse in the United States and that there is a bona fide marital relationship. He is, therefore, ineligible for adjustment of status pursuant to section 1 of the Act. See Matter of Bellido, 12 I&N Dec. 369 (Reg. Comm. 1967).

Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. Further, Matter of Marques, 16 I&N Dec. 314 (BIA 1977), held that when an alien seeks favorable exercise of the discretion of the Attorney General, it is incumbent upon him to supply the information that is within his knowledge, relevant, and material to a determination as to whether he merits adjustment. When an applicant fails to sustain the burden of establishing he is entitled to the privilege of adjustment of status, his application is properly denied.

The decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.